

IN THE MATTER OF MERCANTILE SEAMAN'S DOCUMENTS NO. Z-1246780 AND ALL
Issued to: Major J. CAMPBELL

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1767

Major J. CAMPBELL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 23 December 1968, an Examiner of the United States Coast Guard at Seattle, Washington, suspended Appellant's seaman's documents for three months plus three months on six months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a third refrigeration engineer on board SS SAN JOSE under authority of the document above captioned, Appellant, on or about 10 October 1968, at Yokohama, Japan, and on or about 30 November and 1 December 1968, at Sattahip, Thailand, failed to perform his duties.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and each specification.

The Investigating Officer introduced no evidence.

In defense, Appellant offered in evidence the testimony of a character witness and made a statement.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specifications had been proved by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months plus three months on six months' probation.

The entire decision was served on 7 January 1969. Appeal was timely filed on the same date. Although Appellant had until 10 March 1969 to perfect his appeal, nothing has been received since the original notice.

FINDINGS OF FACT

On all dates in question Appellant was serving as third refrigeration engineer on board SS SAN JOSE and acting under authority of his document.

For reasons discussed below, no further findings are made as

to 10 October 1968.

On 30 November and 1 December 1968 Appellant failed to perform his duties at Sattahip, Thailand.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that duly subpoenaed witnesses, did not appear for Appellant, to his prejudice, and that the order is excessive.

APPEARANCE: Paul J. Fisher, Esq., Seattle, Washington

OPINION

I

The record indicates that two witnesses who were under subpoena issued at the request of Appellant did not appear to testify. It is also evident, however, that these two witnesses were character witnesses and their testimony would have been cumulative to the character evidence introduced. No prejudicial error can be found, especially in view of the disposition to be made of this case, in the failure to require these witnesses to appear, although no good reason for the failure is in the record.

After admitting the failure to perform on 10 October 1968, Appellant stated that after he returned to the ship from the custody of Japanese police "they got to understand that I took off again but I was aboard but was never called for my 8 to 12 watch that night and when I woke up it was about 10:30. They had called the Second Reefer instead because they thought I had went ashore again but I didn't." R-5.

In the absence of any other evidence in the record this statement was a denial of wrongdoing on 10 October 1968. The plea, as to that date, should have been changed, and hearing held on the merits.

Ordinarily, this would require remand for further proceedings, but in this case a revision of the findings and order can correct the error.

III

At the time of the offenses in the instant case Appellant was on probation under an earlier order of an examiner on 14 June 1968.

The three months suspension ordered by the Examiner was required by a finding of misconduct committed during a period of probation.

It is recognized that the Examiner's order in the instant case must be reduced if the findings as to 10 October 1968 are set aside. It is also recognized that when an examiner makes effective a suspension earlier ordered on probation it is proper to add to that order, for the instant offense, rather than simply to make the earlier order effective, without more

CONCLUSION

The effectiveness of the three months' suspension ordered by the Examiner in this case must be affirmed because it is based on a violation of probation. It is also proper to require some further order to account for the misconduct in the instant case. It is further proper to reduce the probationary order because of the dismissal of charges as to one date.

ORDER

The FINDINGS of the Examiner are MODIFIED to reflect that the allegation of the specification as to failure to perform duties on 10 October 1968 is not proved and, as to that offense, the charges are DISMISSED.

The ORDER of the Examiner is modified to provide for a suspension of Appellant's seaman's documents for three months with an additional one months' suspension on six months' probation, and, as MODIFIED, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 20 day of MAY 1969.

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Order of Examiner

- Prior probationary suspension included
- Suspension on probation, properly added to

Plea of Guilty

- Inconsistent with explanation
- Set aside

Revocation or Suspension

- Suspension properly increased over probation
- Violation of probation necessitates suspension

Witnesses

- Character Witnesses
- Cumulative testimony, failure to present
- Failure to require appearance not prejudicial error
- Subpoenaed at party's request